Filed 4/22/19 In re A.G. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re A.G. et al., Persons Coming Under the Juvenile Court Law.	
HUMBOLDT COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, Plaintiff and Respondent, v. H.S. et al., Defendants and Appellants.	A155379 (Humboldt County Super. Ct. Nos. JV160289, JV160290)

H.S. (Mother) and C.G. (Father) appeal from juvenile court orders terminating their parental rights (Welf. & Inst. Code, §§ 366.26, 395).[1] Parents contend the Humboldt County Department of Health and Human Services (Department) failed to comply with the notice provisions of the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) as to Father and Mother's child, A.G., and to Mother's child, N.S.[2]

The Department acknowledges a conditional reversal is necessary to determine whether ICWA applies to A.G., based on Father's possible Yurok ancestry. We therefore conditionally reverse the order terminating Father's parental rights to A.G. The

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] The whereabouts of N.S.'s father are unknown, and he is not a party to this appeal.

Department maintains, however, that sufficient evidence supports the juvenile court's finding that ICWA does not apply to A.G. and N.S., based on Mother's asserted ancestry. We agree, and therefore affirm the order terminating Mother's parental rights as to A.G. and N.S.

BACKGROUND[3]

The minors, N.S. (then six years old) and her half-sister A.G. (then two years old), first came to the Department's attention in October 2016, after a referral of general neglect based on Mother's homelessness, methamphetamine use, and " 'concern that the children were in an unsafe homeless encampment.' " (*H.S. v. Superior Court, supra,* A154376.)

"The Department filed a non-detention petition alleging Mother 'may have substance abuse issues that contribute to [her] being unable to provide adequate shelter, medical treatment, or a consistant [*sic*], stable and safe home environment' for the children, that A.G. had been left without any provision for support, and that A.G.'s other half sibling had been abused or neglected. (§ 300, subds. (b), (g) & (j).)" (*H.S. v. Superior Court, supra,* A154376.) The petition further alleged Father was incarcerated and his parental rights had been terminated as to A.G.'s other half-sibling.

In the Indian Child Inquiry form for A.G. attached to the petition, the social worker checked the box that she "may have Indian ancestry." Mother had reported in November 2016 that Father might have Yurok ancestry. Additionally, Mother reported possible Yurok ancestry for herself and "records indicate[d] possible Karuk ancestry" through Mother's father.

In the inquiry form for N.S., the social worker stated, "has no known Indian ancestry." The "Summary of information" states: Mother "has reported she does not have Native American ancestry. The child's father is from India and [Mother] does not

[3] We recite only those facts relevant to the issue on appeal. The facts leading up to the setting of the section 366.26 hearing are set out in a detailed recitation in our prior opinion (*H.S. v. Superior Court* (Aug. 29, 2018, A154376) [nonpub. opn.]), of which we take judicial notice. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

know his last name or whereabouts, so it is unknown if he has Native American ancestry." Thus, the inquiry form for N.S. reports comments by Mother inconsistent with the information Mother apparently provided as to A.G.

The Department's report supporting the non-detention petition stated Father "may have ancestry through the Yurok tribe," and Mother's father "may have ancestry through the Karuk Tribe," so both parents would be provided with an ICWA-020 form (Parental Notification of Indian Status) at the arraignment hearing. The Department further reported as to A.G.'s tribal status through Mother's heritage, that a social worker had "contacted the Yurok Tribe to verify [A.G.'s] eligibility status and was told [A.G.] is not eligible for enrollment." With respect to N.S., the Department reported ICWA "does not apply" because Mother stated "she does not have Native American ancestry." As we have observed, Mother apparently provided inconsistent information as to her own tribal ancestry in responding to inquiries by the Department about A.G.'s and N.S.'s heritage.

At the January 2017 arraignment hearing, Father stated "he had Yurok and Cowlitz Native American ancestry," and he believed Mother, who was not present, "had Karuk Native American ancestry." The court ordered parents to complete an ICWA-020 form and file it with the court.

In its subsequent jurisdiction report as to A.G., the Department reported, as it had before, that Father "may have ancestry through the Yurok Tribe" and that he would be provided with an ICWA-020 form at the arraignment hearing. Since the arraignment hearing had already taken place, the latter point appears to have been moot.[4] As to both A.G. and N.S., the Department reported Mother had indicated she had Native ancestry

[4] While the court had ordered that Father and Mother be given, and complete, ICWA-020 forms, the forms are not in the record. Nor is there any specific reference to their completion in the Department reports. However, the fact that an ICWA-020 form does no more than elicit whether a parent believes he or she may have Indian ancestry and asks for potential tribal eligibility, and the Department clearly was provided that information very early in these proceedings, suggests the parents either completed the ICWA-020 forms or otherwise provided the Department with the information that would have been provided by the forms.

"through the Yurok Tribe and Hoopa Tribe," and possible ancestry "through the Karuk Tribe" through her father. The social worker further reported that in February 2017, she had spoken with Mother about tribal affiliations and Mother stated "she may be eligible to Hoopa, but not Karuk."

"At the jurisdictional hearing, the court sustained the allegations of the amended section 300 petition, and set the matter for a dispositional hearing." (*H.S. v. Superior Court, supra,* A154376.)

Notices of the dispositional hearing for A.G. were sent to the Karuk, Yurok, and Cowlitz Tribes, and for N.S., notices were sent to the Karuk and Yurok Tribes.

In its disposition report, the Department recounted its efforts to determine ICWA's applicability to A.G. and N.S. The Department social worker reported she had contacted a social worker "with the Yurok Tribe" "[o]n or about 11/16/2016" and "contacted the Hoopa Tribe by phone on, or about, 2/27/2017"—both tribal social workers told her "neither [Mother], nor her daughter, were eligible for enrollment." The Department social worker had also "placed a call to the Karuk Tribe to verify possible Tribal eligibility" on February 24, 2017, and that same day the tribe sent a letter that neither A.G. nor N.S. was eligible for enrollment.

The Department had additionally sent an ICWA-030 form to the Sacramento Area Director, Bureau of Indian Affairs, the Secretary of the Interior, and the Cowlitz Tribe with respect to A.G., stating the child "is or may be eligible for membership." For Father, the only possible tribal affiliation listed was the Cowlitz Tribe, and the tribe had not responded. Thus, no inquiry was made as to Father's possible Yurok Tribe heritage. For Mother, the form listed her potential tribal affiliations as Hoopa or Karuk. However, in the box on the form for "Additional information," the Department stated "The Yurok, Hoopa and Karuk have determined [A.G.] is not eligible." This latter statement clearly referred to eligibility based on Mother's heritage, since the potential of Hoopa and Karuk affiliation had been mentioned only in connection with Mother. This statement also appears to have been based on the Department social worker's telephone calls with the

Yurok, Hoopa, and Karuk Tribes, during which the social worker was told Mother and A.G. were not eligible for tribal status.

The ICWA-030 form also included some of Mother's and Father's parents' information. Under Mother's father, the form stated Hoopa Tribe in the box for "Tribe or band," but then stated he was "Not eligible." Under Father's father, Cowlitz Tribe was listed and his membership or enrollment was "unverified." There was no information listed for either of the parent's grandparents.

Based on its inquiries, the Department concluded both minors were "Not Eligible" for tribal membership or enrollment.

At the dispositional hearing, neither Mother nor Father objected to or challenged the information supplied by the Department as to its inquiry into the tribal status of the children. The court found ICWA did not apply as to N.S., but made no determination as to A.G. as it appeared the Department was still waiting on a response from the Cowlitz Tribe.

The court further "found Mother had made minimal progress towards alleviating or mitigating the causes necessitating involvement, and that the Department had made reasonable efforts to eliminate the need for removal and had offered reasonable services. Because of Mother's substance abuse and mental health issues, her lack of resources and homelessness, the court ordered (1) N.S. and A.G. placed with Mother, (2) the Department to provide family maintenance services to Mother, (3) Mother to participate in evaluations specified in the case plan; and (4) Mother to comply with her case plan. Mother's case plan outlined service objectives and Mother's responsibilities, including that she acquire resources to meet her children's basic needs, address her mental health needs, refrain from using illegal or non-prescribed drugs, participate in a mental health assessment and follow recommendations made by the assessor, complete a parenting class, demonstrate an effort to secure stable housing, engage in an alcohol and other drugs (AOD) program, and submit to drug testing upon request." (*H.S. v. Superior Court, supra,* A154376.)

Subsequently, hair follicle tests revealed the children " 'were exposed to methamphetamine on an ongoing basis,' " with "A.G.'s 'levels measured at 7131 pg/mg, the minimum level for a positive test being 500 pg/mg,' and N.S.'s 'levels measured at 3303 pg/mg,' " indicating " 'frequent exposure' " for N.S. and " 'constant exposure . . . like direct exposure, such as someone smoking [methamphetamine] and blowing it in her face or she was somehow getting the drug into her mouth' " for A.G. (*H.S. v. Superior Court, supra,* A154376.)

The Department filed section 387 petitions, and both children were detained. "N.S. was placed with a non-related extended family member, and A.G. was placed in a foster home." (*H.S. v. Superior Court, supra,* A154376.)

As to the children's tribal eligibility status, the section 387 petitions alleged an Indian child inquiry had been made and both minors "may have Indian ancestry." The Department also provided notice to the Cowlitz Indian Tribe of the detention hearing.

The Department's detention report stated ICWA "may apply" to A.G. While A.G. was not eligible for enrollment in the "Hoopa/Karuk/Yurok" tribes based on Mother's ancestry, Father, who was incarcerated again, had stated he belonged to the Cowlitz Tribe and an ICWA-030 form had been sent to that tribe on March 7, 2017. As to N.S., the report stated ICWA "does not apply," explaining she was not eligible for enrollment in the "Karuk/Yurok" tribes based on Mother's ancestry and it was "unknown" if her father had any Native American ancestry.

At the detention hearing on the section 387 petitions, neither parent objected to the Department's conclusions as to ICWA.[5] The court "found there was a need for continued detention of the minors and that there was a substantial danger to their physical health should they remain in Mother's care. The court ordered the Department to provide Mother with a parenting education program, random drug screenings and monitoring, and a substance abuse assessment. The court then set the matter for a jurisdictional hearing." (*H.S. v. Superior Court, supra,* A154376.)

[5] Neither parent was present, but both were represented by counsel.

In its jurisdiction report, the Department again stated ICWA "may apply" to A.G., as Father had indicated he belonged to the Cowlitz Tribe, and an ICWA-030 form had been sent to that tribe on March 7, 2017. However, A.G. was not eligible for enrollment with the "Hoopa/Karuk/Yurok" Tribes, based on Mother's ancestry. As to N.S., the Department again reported ICWA did not apply, as she was not eligible for the "Karuk/Yurok" Tribes through Mother, and her father was not known to have any Native American ancestry.

At the jurisdictional hearing on the section 387 petitions, Mother and Father again voiced no objections to the Department's report on the tribal status of the minors.

The court sustained the section 387 petitions, finding "that continuance in Mother's home was contrary to the minors' welfare, and that reasonable efforts had been made to prevent the minors' removal. A dispositional hearing was set for July 2017." (*H.S. v. Superior Court, supra*, A154376.)

In its dispositional report, the Department reported that the social worker still had not received any response from the Cowlitz Tribe regarding Father's possible tribal affiliation. However, the social worker had spoken with Father's mother, and she "stated she had heard [Father] claimed to be Native American, but she did not know why he said that." Accordingly, at this point, the Department concluded ICWA did not did not apply to either A.G. or N.S.

At the hearing, neither Mother nor Father challenged or objected to the Department's report as to the tribal status of the children. Based on the reports of the Department's inquiries, the court found ICWA did not apply to either minor.

The court further "found Mother had made minimal progress toward alleviating the causes necessitating placement and that return of the children would create a substantial risk of detriment to their safety. It ordered Mother to participate in her case plan, and advised her of the possibility of permanency planning and a termination of her parental rights. The court then set the matter for a six-month status review hearing." (*H.S. v. Superior Court, supra*, A154376.)

In its status review report, the Department stated "[a]t the Dispositional Hearing held on 09/18/2017, it was found that ICWA did not apply. No new information ha[d] been received to change that decision." The Department also stated Mother "had not made substantial progress in resolving issues that led to removal and there was 'not a substantial probability' that she would be able to fully address those issues by the 12-month date. The Department thus recommended termination of services and that a section 366.26 hearing be set." (*H.S. v. Superior Court, supra,* A154376.)

At the status review hearing, neither Mother nor Father objected to the Department's report as to the tribal status of the minors.

"The court then found by a preponderance of the evidence that return of the minors would create a substantial risk of detriment to their safety, protection or physical or emotional well-being and further determined by clear and convincing evidence that reasonable services had been offered and that Mother had failed to participate regularly and make substantive progress in her case plan. The court concluded there was no 'substantial probability' of return of the children by the fast-approaching June 14, 12-month review date. After taking into consideration the submitted reports and testimony, the court terminated services and set the matter for a 366.26 hearing." (*H.S. v. Superior Court, supra,* A154376.)

Mother sought writ relief in this court, contending the juvenile court should have found extenuating circumstances to extend services and challenging the court's findings that she was provided reasonable services. We denied the petition on August 29, 2018. (*H.S. v. Superior Court, supra*, A154376.)

That same day Mother filed a section 388 petition in the juvenile court to change the orders terminating her reunification services, or alternatively, to have A.G. and N.S. placed with her.

In its section 366.26 report, the Department's statements regarding ICWA remained the same as in its status review report—that "[a]t the Dispositional Hearing held on 09/18/2017, it was found that ICWA did not apply. No new information had been received to change that decision."

The report further stated Mother had missed three consecutive visits with A.G. and visitation had been canceled. A.G.'s behavior of "defiance to any given directions, using foul language, and attempting to injure other children in [her foster] home by hitting, biting, and throwing objects," had decreased during the month she was not visiting Mother; however, when visits recommenced, A.G. "again struggled with emotional regulation and a peaceful and consistent sleep routine." She also "began to act aggressively toward other children," "to grunt instead of using her words," and to curse at her foster parents. In April 2018, N.S. had "expressed to the social worker that she no longer wanted to attend visits with [] [M]other," and since then, she had "continued to refuse to see her mother." N.S. had "reported nightmares concerning [] [M]other coming to take her away, putting a dog collar on her, and bringing her out to the street and killing her." She also stated she did not feel safe around Mother. The Department asked the court to suspend visitation between Mother and the minors as detrimental to the children. The court granted the request to suspend visitation.

At the hearing on her section 388 petition, Mother testified she had graduated from the Waterfront Recovery program and was now doing aftercare one day a week. She was still seeing her individual counselor. She was currently staying with her mother where there would be room for the children, although she was also on the list for rapid rehousing. She was currently appealing denial of her social security. She had had a drug test in June but had not tested since then. She planned to start going to group therapy through Humboldt County Mental Health program and believed she would also be drug tested when she started that program. Mother claimed she was clean and sober and intended to "stay that way." On cross-examination, Mother admitted she had attempted suicide in May after the termination of her services, and as a result had been "kicked out of the clean and sober house."

While observing she had "done very well" with the Waterfront Recovery program, the court nonetheless found Mother had "failed to meet her burden to justify the reopening of reunification services," and that it "would not be in the best interest of the

children at this point to reopen or re-establish such services." It then denied Mother's request to change the order terminating reunification services.

The court then moved on to the section 366.26 determination. Counsel for the Department asked the court to find both minors adoptable, that there had been "no evidence to establish that any of the exceptions to termination of parental rights apply in this matter," that the children were likely to be adopted by their current foster parent, and that it was in the best interest of the children to provide them with the permanent plan of adoption. Minor's counsel was in agreement with the Department.

Stating it had read and considered the assessments, reports and recommendations by the Department, as well as the wishes of the children, and had heard from all counsel, the juvenile court found there was clear and convincing evidence the children would likely be adopted. As to A.G., the court terminated Father's and Mother's parental rights, and as to N.S., the court terminated Mother's parental rights. The court further found adoption was likely to be finalized in September 2019, the children's placement was necessary, and the agency had complied with the case plan by making reasonable efforts. The court additionally stated that if the case involved Indian children, the court found the Department had made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts proved unsuccessful.

DISCUSSION

As we explain, the issue in this case is somewhat narrower than whether the Department gave "adequate ICWA notice" of the dependency proceedings. The specific issue is whether the evidence provided to the juvenile court by the Department was sufficient to support the court's threshold findings that ICWA did not apply to either child.

Father's Appeal as to A.G.

Father maintains the evidence was insufficient to support the juvenile court's finding ICWA did not apply to A.G. because the question concerning his possible Yurok Tribe heritage was never answered. As we have recounted, Father is correct. Thus, the

Department concedes that, as to Father, there should be a conditional remand as to A.G. to inquire into her tribal status based on Father's potential Yurok heritage.[6]

Mother's Appeal as to A.G. and N.S.

Mother asserts the evidence was also insufficient to support the juvenile court's finding that ICWA does not apply to either A.G. or N.S. by virtue of her heritage, given the initial suggestions of her potential Yurok, Karuk, and Hoopa ancestry.

The Department maintains that in asserting failure to comply with ICWA "notice" requirements, Mother has conflated the duty of inquiry as to *whether* a child is an Indian child, with the duty to give notice of dependency proceedings involving the removal of an Indian child.

We review a juvenile court's finding that ICWA does not apply for substantial evidence. (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1430; *In re Karla C.* (2003) 113 Cal.App.4th 166, 178–179.)

A county welfare department has an affirmative, and continuing, duty to inquire whether a child subject to a section 300 dependency proceeding is or may be an Indian child if the child is at risk of entering foster care or is in foster care. (Former § 224.3, subd. (a).)[7]

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[6] ICWA's "limited reversal approach is well adapted to dependency cases involving termination of parental rights in which we find the only error is defective ICWA notice. This approach allows the juvenile court to regain jurisdiction over the dependent child and determine *the one remaining issue*." (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 705, italics added.) No other issues may be considered, and remand is limited to compliance with ICWA. "If the only error requiring reversal of the judgment terminating parental rights is defective ICWA notice and it is ultimately determined on remand that the child is not an Indian child, the matter ordinarily should end at that point, allowing the child to achieve stability and permanency in the least protracted fashion the law permits." (*Id.* at p. 708.)

[7] Several statutes concerning inquiry into a child's tribal status, including sections 224.2 and 224.3, were amended by Assembly Bill No. 3176 (2017–2018 Reg. Sess.), effective January 1, 2019. We therefore refer to the statutory provisions operative at the relevant time, as the "former" statute.

Former section 224.3, subdivision (c), thus provided: "If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker . . . is required to make *further inquiry* regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2, contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership in and contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." (Italics added.)

California Rules of Court, rule 5.481 similarly provides, "At the first appearance by a parent . . . in any dependency case . . . ; the court must order the parent . . . to complete *Parental Notification of Indian Status* (form ICWA-020). [¶] (3) If the parent . . . does not appear at the first hearing . . . , the court must order the person or entity that has the inquiry duty under this rule to use reasonable diligence to find and inform the parent . . . that the court has ordered the parent . . . to complete *Parental Notification of Indian Status* (form ICWA-020). [¶] (4) If the social worker . . . knows or has reason to know that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable by: [¶] (A) Interviewing the parents, Indian custodian, and 'extended family members' as defined in 25 United States Code sections 1901 and 1903(2), to gather the information listed in Welfare and Institutions Code section 224.2(a)(5) . . . , which is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030);[8] [¶] (B) Contacting the Bureau of

[8] Former section 224.2, subdivision (a)(5)(A)–(F) instructed, in pertinent part, that this notice (the ICWA-030 form) include all of the following information: "(A) The name, birthdate, and birthplace of the Indian child, if known. [¶] (B) The name of the Indian tribe in which the child is a member or may be eligible for membership, if known. [¶] (C) All names, known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death,

Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership; and [¶] (C) Contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." (Cal. Rules of Court, rule 5.481(a)(2), (3), (4)(A)–(C).)

Thus, ICWA "does not require notice *anytime* a child of possible or actual Native American descent is involved in a dependency proceeding. The act states, 'In any involuntary proceeding in a State court, where the court *knows or has reason to know* that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe . . . .' (25 U.S.C. § 1912(a); see also 25 C.F.R. § 23.11 (2005) [notice requirements when foster placement or termination of parental rights sought].)" (*In re Alexis H.* (2005) 132 Cal.App.4th 11, 14 (*Alexis*), second italics added.) In other words, ICWA "notice" of dependency proceedings is required only in proceedings where the child has been or will be removed, and, then, only when the social worker has reason to know an Indian child is involved. (*Id.* at p. 14; see *In re J.L.* (2017) 10 Cal.App.5th 913, 922 [" 'In a juvenile dependency proceeding, a claim that a parent, and thus the child, "may" have Native American heritage is insufficient to trigger ICWA notice requirements if the claim is not accompanied by other information that would reasonably suggest the minor has Indian ancestry.' "].)

As the Department points out, no ICWA "notice" was required as to any of the dependency proceedings prior to the filing of the section 387 petitions, as prior to that time, the children had not been removed from the home, nor was the Department seeking removal. (See 25 U.S.C. § 1903(1)(i)–(iv) [ICWA applies to child custody proceedings, including " 'foster care placement,' " " 'termination of parental rights,' " " 'preadoptive

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tribal enrollment numbers, and any other identifying information, if known. [¶] (D) A copy of the petition by which the proceeding was initiated. [¶] (E) A copy of the child's birth certificate, if available. (F) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section. . . ."

placement,' " and " 'adoptive placement.' "]; *Alexis, supra,* 132 Cal.App.4th at p. 15 ["When authorities remove a child of Native American descent from his home, [the ICWA] promotes foster care or adoption by a Native American family in the hope of preserving tribal culture. If, however, authorities do not move the child to another family, the purpose does not come into play."].)

ICWA "notice" was potentially required once the Department filed the section 387 petitions, since at that point, the children were removed from the parents. (See 25 U.S.C. § 1912(a) ["In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian child custodian and the Indian child's tribe . . . of the pending proceedings and of their right of intervention."]; *Alexis, supra,* 132 Cal.App.4th at pp. 14–15.) The Department maintains, however, that by that time, there was no reason to know or suspect the two children had any tribal affiliation through Mother, as the Department had already inquired into that issue. As the Department points out, in its March 2017 disposition and May 2017 section 387 detention reports, it reported that the social worker had spoken by telephone with tribal social workers on February 27, 2017 (Hoopa Tribe), February 24, 2017 (Karuk Tribe), and November 16, 2016 (Yurok Tribe), and been told neither Mother nor A.G. was eligible for tribal membership. If Mother's ancestry did not provide tribal eligibility for A.G., it likewise did not provide eligibility for N.S.

In support of its assertion that it adequately inquired into the minors' tribal status based on Mother's ancestry, the Department cites to *In re C.A.* (2018) 24 Cal.App.5th 511 (*C.A.*) and *In re Shane G.* (2008) 166 Cal.App.4th 1532 (*Shane G.*).

In *C.A., supra,* 24 Cal.App.5th 511, the presumed father claimed at the detention hearing that he was of Cherokee heritage. The court ordered him to complete the standard ICWA forms and ordered the infant, who had tested positive for methamphetamine at birth, detained and placed in foster care. (*Id.* at pp. 513–514.) When the agency later found the child's biological father, he "informed the court that although he thought he might have had Native American heritage through his biological

father, he had since discovered that the man he thought was his biological father was actually not his father, and he did not have any Native American heritage." The juvenile court found that because the biological father ultimately disclaimed any Native American ancestry, ICWA did not apply. (*Id.* at pp. 514–515.)

On appeal, the presumed father and the mother challenged the court's ICWA ruling and claimed the court had erred in not requiring ICWA notice based on the presumed father's assertion of Native American ancestry. (*C.A., supra*, 24 Cal.App.5th at p. 519.) The Court of Appeal held that once the biological father disclaimed any tribal ancestry, the agency's duty to inquire as to the status of the child was satisfied insofar as it was based on that parent's heritage. (*Ibid.*) The court further held that ICWA did not apply based on the presumed father's claim of tribal ancestry since he was not C.A.'s biological or adoptive father. (*Ibid.*)

In *Shane G., supra*, 166 Cal.App.4th 1532, 1536–1537, the mother claimed some Comanche heritage, and the maternal grandmother reported the child's great-great-great-grandmother was a Comanche princess. However, the grandmother acknowledged she had never seen "any ceremonial costumes and no one in the family ever participated in Indian ceremonies, lived on a reservation, attended an Indian school or received services from an Indian health clinic." (*Id.* at p. 1537.) There had also been a prior finding as to one of the Mother's older children that ICWA did not apply, and there was an attached letter in the file from the Comanche Tribe stating it did not intend to intervene in that case because that child did not have at least one-eighth Comanche heritage. Additionally, the parties stipulated (1) the Comanche enrollment officer would testify the tribe required any member to be "at least one-eighth Comanche" and (2) the maternal grandmother would testify the child had a "1/64th Comanche heritage." (*Ibid.*)

The Court of Appeal concluded the agency's "inquiry produced no information [the child] was an Indian child," pointing out the maternal grandmother indicated no one in the family had lived on the reservation or received services from an Indian health clinic, etc., and more significantly, the evidence showed the Comanche Tribe required "a

minimum blood quantum for membership" that excluded the child. (*Shane G., supra*, 166 Cal.App.4th at p. 1539.)

Although the facts of *C.A.* and *Shane G.* differ from those of the case at hand, there are similarities. Here, too, Mother denied having Karuk ancestry. Furthermore, the tribe sent a letter confirming that Mother and the minors were not eligible for enrollment. With respect to the Hoopa and Yurok Tribes, the Department social worker contacted the tribes directly, and was told Mother and the children were ineligible for enrollment. Despite having many opportunities to do so, Mother never challenged the information the Department provided to the court about its inquiries into the tribal status of the minors. Mother also never provided the Department with any additional information pertaining to the tribal status of the minors warranting further inquiry by the Department.

Mother's position essentially comes down to a claim that the Department, despite having contacted the tribes directly and having been told Mother and the children were ineligible for membership, was nevertheless *required* to send an ICWA-030 form to these tribes. Moreover, she makes this claim without having made any showing, or even an offer of proof, that the information the tribes provided to the Department, and which the Department, in turn, provided to the juvenile court, was in error in any way. Mother cites no authority that supports her claim that the Department essentially had to duplicate the inquiry efforts it had already made. We therefore do not agree that the Department's inquiry was legally deficient because it did not, in addition to its other inquiries, send out ICWA-030 forms to the tribes it had already contacted.

DISPOSITION

The order terminating Father's parental rights as to A.G. is conditionally reversed, and the matter is remanded to the juvenile court for the limited purpose of ensuring compliance with the Indian Child Welfare Act as to Father. If, after such compliance, the juvenile court determines the child does not have Indian heritage, then the juvenile court shall reinstate the order terminating Father's parental rights. The order terminating Mother's parental rights as to A.G. and N.S. is affirmed.

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Banke, J.

WE CONCUR:

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Humes, P. J.

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Sanchez, J.